IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5279 OF 1992.

1. Mutukrishnan Nanikram Rajlingam, age 56, occ. pensioner, r/o Stovely Road, Govt. Quarters, Pune - 1.

2. M.G. Murthy, 56 yrs., oc. pensioner.

3. Sou. Sharda Dinesh Yadav, adult, occ: Household.

4. Ram Manikam Rajlingam, adult, occ: service.

5. Pandurang Manikram Rajlingam, adult, occ: service.

All Nos.2 to 5 r/o 105, Wanawadi, Bazar, Pune - 40. .. Petitioners (Ori. Pltffs.)

Versus

Gulab Juman Mehtar, adult, Occ: Service, r/o 105, Wanawadi Bazar, Pune - 40. .. Respondent (Ori. Defdt.)

Ms. Suman Jain for the petitioners.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 18TH JULY, 2005

ORAL JUDGMENT. :

1. The Petitioners-landlords have invoked the provisions of Article 227 of the Constitution of India

and pray to consider their case of bonafide need as contemplated under the provisions of The Bombay Rents Hotel Lodging House Rates (Control) Act, 1947 (for short "Bombay Rent Act"), as Small Causes Court, Pune (Trial Court) by its judgment and order dated 25th October, 1991, granted the decree for possession, but the Additional District Judge, Pune (Appellate Court) in the Appeal filed by the respondent-tenant by judgment and order dated 28th April, 1992, allowed the Appeal and set aside the Trial Court's order that resulted into dismissal of the suit in question.

2. The suit premises consists of a room on the ground floor in the house bearing No.105, situated at Wanawadi Bazar, Pune. The tenancy was monthly @ Rs.5/- exclusive of taxes. The tenant was in arrears of rent since 1/1/1977. By Notice dated 31/1/1989, tenancy was terminated with effect from 28/2/1989 on the ground of default, nuisance and reasonable and bonafide need of the family. The respondent-tenant resisted the same. The Trial Court, after considering the evidence of the petitioner No.3 i.e. plaintiff No.3 and the other material placed on the record, held that the petitioners proved their reasonable and bonafide need. The issue of greater hardship also favoured the petitioners-landlords. The other grounds were not

pressed and, therefore, the same were not decided.

3. The Appellate Court, in the Appeal filed by the respondent-tenant, reversed the said reasoning of the Trial Court and dismissed the suit by holding that the petitioners failed to prove their case of bonafide need. After going through the record with the assistance of the learned counsel for the petitioners, it is to be noted that the order of reversal by the Appellate Court has two feeble foundations, one that out of 5 petitioners-landlords, only one landlord entered the witness box to depose their need and as the other petitioners failed to enter the witness box, the case of bonafide requirement cannot be said to be honest. The learned counsel appearing for the petitioners has relied on **Nathulal Gangabaks Khandelwal & Ors. Vs. Nandubai Bansidhar Khandelwal & Ors.** 1984, Mh.L.J., 253 in support of her submission that the Appellate Court erred in law by reversing the finding given by the Court below on this issue of non-examination of other petitioners to justify their need. In **Nathulal** (supra), a Division Bench of Bombay High Court has held thus:

> "There is also no warrant for the proposition that *bona fide* need of the landlord cannot be said to be established unless the landlord or the landlady himself or herself steps in the

> witness-box to depose the need. The need can be established from the circumstances brought on record."

4. In the facts and circumstances of the present case, I am of the view that the reasoning given by the Trial Court, after considering the evidence led by the parties, is correct. The circumstances, as referred and relied by the Appellate Court, in no way discards the bonafide need of the petitioners. The requirement of quality evidence is necessary and not of quantity. Out of five landlords, if one landlord deposed in favour of their need and other material supports the same, merely because the other landlords failed to lead their respective evidence, that by itself cannot be the reason to dismiss the claim of bonafide need. In the facts and circumstances of the present case, I am of the view that there is ample material on the record to support the case of bonafide need of the petitioners.

5. There is a clear finding on the record so far as the petitioner No.4 is concerned that he has two sons aged 17 and 18 years respectively at the relevant time as noted by the Appellate Court. The petitioner No.4 is residing along with his wife and two sons. The premises in occupation of the petitioners-plaintiffs is not

sufficient and considering the requirement of such young sons, it is difficult to disbelieve the case of the landlords when they want the premises for himself and his family members' occupation. Considering the evidence of PW3 i.e. plaintiff No.3 and the unrebutted evidence on this aspect of bonafide need, I am inclined to accept the view taken by the Trial Court, granting the decree for possession.

6. Once the bonafide need of the landlords has been considered by the Trial Court, based on the foundation, which remained undisturbed and in the facts and circumstances of the case, the issue of greater hardship also tilts in favour of the petitioners-landlords.

7. For the above reasons, the judgment and order dated 28th April, 1992, passed by the Appellate Court in Civil Appeal No.597 of 1991 is set aside and the judgment and decree dated 25th October, 1991, passed by the Trial Court in Civil Suit No. 633 of 1989 is hereby restored. The decree for possession, as prayed, is granted accordingly.

8. In view of the above, the Writ Petition is allowed. Rule is made absolute. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]